In the High Court of Punjab and Haryana at Chandigarh

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C.W.P. No.10806 of 2006

.....

Date of decision:20.7.2006

Prem Singh and others

.....Petitioners

v.

State of Punjab and others

.....Respondents

....

Coram: Hon'ble Mr. Justice S.S. Nijjar
Hon'ble Mr. Justice S.S. Saron

Present: Mr. D.V. Sharma, Advocate for the petitioners.

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S.S. Saron, J.

In this civil writ petition under Articles 226/227 of the Constitution of India the petitioners seek a writ of mandamus directing the respondents to make the payment of upto date salary to the petitioners.

The petitioners are working in Tarn Taran Cooperative Sugar Mills Limited, Tarn Taran (`Mill' – for short) for the last 20 years. Three of the petitioners are working on daily wages. The petitioners, it is alleged, have not been paid their salary since January 2006 even though the General Manager of the Mill has been getting his salary regularly. There are two types of staff in the Mill one is the common cadre staff and the other is mill cadre. The petitioners belong to the Mill cadre. It is stated that the Registrar, Cooperative Societies, Punjab (respondent No.2) has vide order dated 7.3.2006 (Annexure-P.2) under Section 57 of the Punjab Cooperative

Societies Act, 1961 (`Act' – for short) started winding up proceedings in respect of the Mill and Joint Registrar, Cooperative Societies, Jalandhar Division has been appointed as Liquidator. It is further stated that the Mill is an `authority' within the meaning of Article 12 of the Constitution of India as the Mill is a Cooperative Society registered under the Act and the Government has 88.56% share holding in the Mill. Besides, the Registrar, Cooperative Societies has framed service rules for employees of the Sugar Mills in the State of Punjab. The State, therefore, exercises deep and pervasive control over the affairs of the Mill and its policies are regulated by the State Government.

We have heard learned counsel for the petitioners.

After giving our thoughtful consideration to the contentions as raised we find no merit in the same. The petitioners are claiming the payment of due salary. The Mill where the petitioners are working is admittedly under the winding up process which is to be carried out in accordance with provisions as contained under Chapter-IX of the Act and Chapter-VIII of the Punjab Co-operative Societies Rules, 1963. Section 58 of the Act provides that where the Registrar has made an order for winding up of a Cooperative Society, he may appoint a Liquidator for the purpose. The Liquidator on his appointment is to take in his custody or under his control the property, effects and actionable claims to which the society is or appears to be entitled. Section 59 provides for powers of the Liquidator. The whole of the assets of a cooperative society in respect of which an order for winding up has been made are to vest in the Liquidator. The provisions of Section 59(2)(c), (d), (i) and (j) of the Act which are relevant for

consideration of the matter read as under:-

> "**59. Powers of Liquidator.-** (1) xx xx
>
> (2) Such liquidator shall also have power, subject to the control of the Registrar -
>
> (a) to (b) xx xx xx xx xx
>
> (c) to investigate all claims against the co-operative society and subject to the provisions of this Act, to decide questions of priority arising between claimants;
>
> (d) to pay claims against the co-operative society, including interest up to the date of winding up according to their respective priorities, if any, in full or rateably, as the assets of the society may permit; the surplus, if any, remaining after payment of the claims being applied in payment of interest from the date of such order of winding up at a rate fixed by him but not exceeding the contract rate in any case;
>
> (e) to (h) xx xx xx xx
>
> (i) to make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging to have any claim, present or future, whereby the society may be rendered liable;
>
> (j) to make any compromise or arrangement with any person between who and the society there exists any dispute and to refer any such dispute to arbitration;"

In terms of Section 59(3) of the Act when the affairs of the Cooperative Society have been wound up, the Liquidator is to make a report

to the Registrar and deposit the records of the society in such place as the Registrar may direct. Therefore, the petitioners have a remedy before the Liquidator of the Mill when admittedly an order of winding up of the Mill has been passed and the Joint Registrar, Cooperative Societies, Jalandhar Division, Jalandhar has been appointed as Liquidator of the Mill vide order dated 7.3.2006 (Annexure-P.2).

Even otherwise, the claim which has been made by the petitioners in this petition is not liable to be entertained in the present proceedings as the writ petition against the Mill which is a Cooperative Society is not maintainable. In General Manager, Kisan Sahkari Chini Mills Ltd., Sultanpur, U.P. v. Satrughan Nishad and others, (2003) 8 SCC 639 a writ was held to be not maintainable against the Sugar Mill in the said case which was a Cooperative Society registered under the U.P. Cooperative Societies Act, 1961. The service of surplus workmen of the Sugar Mill in the said case were terminated which was assailed by way of writ petition. The State Government had 50% share in the co-operative society of the said case. Two-third strength of the Managing Committee of the Society comprised of non-Government members and one-third comprised of Government nomines. Due to deteriorating financial conditions of the Sugar Mill in the said case, the services of some surplus workmen were terminated without paying any compensation and without any notice. The writ petition of the affected persons seeking various reliefs was allowed by the High Court and a direction was issued to regularize the services of the petitioners therein in a phased manner. The Hon'ble Supreme Court allowing the appeals against the order of the High Court held that the Sugar Mill was not an agency or

instrumentality of the State and was not engaged in any activity involving any public function. The writ jurisdiction of the High Court could, therefore, not have been exercised. In the said case the Cooperative Society was a Sugar Mill as in the present case. It was observed by the Supreme Court that the Mill therein was engaged in the manufacture and sale of sugar which would not involve any public function and there was no difficulty in holding that the jurisdiction of the High Court under Article 226 of the Constitution could not have been invoked. The ratio of the said judgment is applicable to the case in hand. Besides, in S.S. Rana v. Registrar, Co-operative Societies and another, JT 2006 (5) SC 186 the Kangra Central Cooperative Bank Limited which was a Cooperative Society was held to be not a State within the meaning of Article 12 of the Constitution of India. It was held that the High Court cannot be said to have committed any error in arriving at a finding that the respondent-Bank in the said case was not a State within the meaning of Article 12 of the Constitution of India. Learned counsel for the petitioner has, however, placed reliance on the case of Gayatri De v. Mousumi Cooperative Housing Society Ltd. And others, JT 2004 (5) SC 554. The ratio of the said case is not applicable to the case in hand. It was held therein that the Special Officer appointed under the provisions of the relevant Cooperative Societies Statute is a statutory authority and, therefore, a writ petition would be maintainable where the subject matter of writ petition is an order passed by a Special Officer in the discharge of his statutory functions. As such, in a case where the Cooperative Society is under the control of a Special Officer a writ would lie. However, the present is not a case where any order has been passed by any authority in exercise of its statutory

functions which is assailed in the present petition. The claim is basically for the grant of salary which is stated to have not been paid to the petitioners since January 2006. Therefore, the petitioners having remedy before the Liquidator as also other remedies for claim of pay and even otherwise the respondent Mill not being a `State' within the meaning of Article 12 of the Constitution of India, we find no ground to exercise the extra-ordinary writ jurisdiction of this Court under Articles 226/227 of the Constitution of India.

For the foregoing reasons, there is no merit in this petition and the same is accordingly dismissed. However, the petitioners would be at liberty to avail other alternative remedies available to them in accordance with law.

(S.S. Nijjar)
Judge

July 20, 2006.

(S.S. Saron)
Judge

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